

## REMARKS

In the office action mailed July 27, 2004, claims 1-11 and 13 were rejected based under 35 USC 103(a) based on Moribe (US 5818812) and Kajiyama (US6108296). Claims 12 and 14 were rejected based on the added reference of Ogawa (US6704269).

Applicants traverse the rejection based upon the combination of Kajiyama '296 and Moribe '812. The following remarks will show that the rejection is fundamentally flawed because it misconstrues the vendor code of Kajiyama '296 as the performed code of the claims, misconstrues Kajiyama '296 as performing encryption based on the vendor code, and Moribe '812 teaches away from the claimed combination of two codes on the optical disc for encrypting a program.

In Kajiyama '296 the vendor code 10 is not part of a copy protection system and is not used by Kajiyama '296 to encrypt a program. The vendor code 10 is merely one datum among other data that is written into a protected area on a writable disc. The protected area cannot be overwritten; it is protected from erasure. In Kajiyama '296 the anti-theft feature is performed by the micro pits. These features cannot be readily copied. If a read-only disc with micro pits is copied, the micro pits are not reproduced and the copied disc will not run.

The vendor code that is used as a basis for rejection is unrelated to the micro pits and is unrelated to the anti-copying feature. Kajiyama '296 has no disclosure that its vendor code is used to encrypt a program. Instead, the vendor code appears to be simply one other datum among a field of data that is used to inventory the disc.

Kajiyama '296 has no disclosure for encrypting any programs based on the vendor code. The vendor code appears to be no more than a datum that is used to identify the manufacturer or source of the disc or a program on the disc.

Moribe teaches away from the claimed combinations. Combining the judge and identification codes of Moribe would, in the system of Moribe, defeat the purpose of Moribe's disclosure. The claimed combinations provide for an encrypted program written with both IDs. However, Moribe expressly requires using separate IDs for different functions.

Moribe, by its own terms, addresses a problem of fatigue. In its background it identifies an earlier Moribe application that provided one code which was used

repeatedly to check the disc. That one code was put in a rewriteable area and was written with a high intensity beam to make it irreversible. But Moribe '812 observes that their prior system was flawed because it relied upon reading the code, erasing the sector where the code was written and then reading it again to see if the code was there. Given the frequent code checks, the sector soon became fatigued and could no longer erase.

In Moribe '812 the same read/erase/reread system is carried forward. Moribe reduces the fatigue by adding a medium judge code 2 to the disc. But the disc still uses a medium identification code 4 that is irreversibly written in a rewritable area. The medium judge code 2 is used, presumptively for more frequent checks and the medium identification code is likely used for less frequent checks. See Figs. 7a, 7b and column 7, lines 24-46 (judge code) and lines 47-67 (identification code).

Moribe '812 mandates that the two codes be used separately. The separate use of the two codes delays fatigue that is inherent in Moribe's system. It would defeat the purpose of Moribe '812 to combine the judge and identification codes. If they were combined, then each check would use both codes. That would mean the judge code would be used for each check. That is precisely the problem that Moribe '812 seeks to overcome. Such repeated use would lead to the early fatigue that Moribe was seeking to prevent. In other words, combining the two codes would remove the benefit of having a separate code, such as the identification code, that reduced the use of the judge code.

Independent claims 1, 2, 8, 11 and 14 are patentable over the art of record because Kajiyama does not show or suggest an encrypted program written onto the disk based upon the vendor code and Moribe requires two separate codes operating separately and expressly not in combination for protecting a disc.

Claim 3 depends upon claim 2 and is patentable over the art of record on the same grounds as claims 1, 2, 8, 11 and 14 and on further grounds that Moribe fails to show or suggest reading and decrypting an encrypted program based upon two IDs on the disc. The apparent step of decryption, if any, is performed only using one code. See Moribe '812, column 7, lines 24-46.

Claims 4, 5, 6, and 7 depend upon claim 1 and are patentable over the art of record on the same grounds as claim 1, *supra*.

Claim 8 is patentable for the reasons given above and on the further grounds that no reference of record shows encrypting a customer program using two IDs on the disc.

Claim 9 depends upon claim 1 and is patentable over the art of record on the same grounds as claim 1, supra. It is further patentable on grounds that, contrary to the rejection, Kajiyama does not show or suggest pressing an encrypting program onto a disc. The cited section of Kajiyama at col. 6, lines 23-39 has no disclosure about an encrypting program. A key word search of the reference using "encrypt" shows no hits.

Claim 10 depends on claim 8 and is patentable over the art of record for all the reasons given above for claim 8. In addition, the reference Moribe at col. 7, lines 10-23 discloses only one computer and fails to show or suggest an encrypting program on another computer.

Claim 11 is patentable over the art of record for the reasons given above that are common to claims 1, 2, 8, 11 and 14 and for the further reason that no reference shows or suggest combining a preformed and a unique ID to form a decryption key. Moribe teaches away from combining two keys because it uses separate keys to prolong the useful life of the disc.

Claim 12 depends from claim 11 and is patentable for the reasons given above and for the further reason that Ogawa does not show or suggest using the ATIP signal for storing performed ID codes. The portion of Ogawa referenced by the office action identifies only linear velocity as part of the ATIP signal. The reference merely states that the ATIP signal is in the lead in area. It does not say that ID information is stored in the ATIP signal. In contrast, the invention uses at least a part of the ATIP signal to store an ID code. This saves space and also helps prevent copying since the ATIP signals cannot be copied.

Claim 13 depends from claim 1 and is patentable over the art of record for the reasons given above in connection with claim 1. In addition, Applicants traverse the finding that there are an infinite amount of number possibilities. Assuming there is an infinite amount of numbers, it stands to reason that one would need an infinite amount of storage space to record the infinite numbers. However, in the real world (and in the invention), the amount of storage space is limited to, at most, the space on the disk. Indeed, the amount of space for a protection code is much less or else there would be

no room on the disk for data and programs. As such, the limitation of claim 13 is meaningful and is not shown or suggested by the art of record.

Claim 14 is patentable over the art of record of the same reasons given above for claims 1, 2, 8, 11 and 14 and for the further reason given above for claim 12. Ogawa does not show using the ATIP signal for holding a preformed ID.

Having thus demonstrated that the claimed invention is not shown or suggested by the art of record, a notice of allowance is respectfully requested.

Respectfully submitted,

10/27/2004  
Date

Thomas R. Fitzgerald  
Thomas R. Fitzgerald  
Reg. No. 26,730

Law Office of Thomas R. Fitzgerald  
16 E. Main Street, Suite 210  
Rochester, New York 14614  
Telephone: (585) 454-2250  
Fax: (585) 454-6364